

ABSTRACT

According to the contract of sale of land development project, the buyer is allocated in the project may commonly confront several significant legal problems in the following issues.

1. Contract of Booking: This issue resulted in several legal manners, that is, the contract of booking was not applicable and may become only to contract to sell. (It is not a completion of the sale.)

2. Multiple Contract Forms: The seller requires the buyer to make several types of contract such as 1) Contract to sell a plot of land, 2) Contract of service to build home on such lands, and 3) Contract of service to decorate buildings, i.e. To make contract in several types of forms will be of benefit to the seller in respect of the liability under the contract and reduce the tax burden. In contrast, as a party of contract it causes the burden to the buyer being liable when having damages.

3) Power to entitle the contract of the seller: Most sellers will be the type of entity as a juristic person – Company - that assigned sales contracts (agents) having a right to sign in the land allocation program, however, the sale agents may not have the mandate to represent the clear in some cases. If so, the seller may deny the sales contract which is to sign on behalf of the Parties. This causes harm and damage to the buyers.

4) Media advertising of Land Allocation Project: The seller may not perform following to the ads. In addition, there are some problems relating to asserted words on advertising that cause the burden and functions to the Buyers

5) The sale of the property before the land allocation program approved by the Board allocated: This leads to the argument whether the contract is contrary to law and the principle of ownership.

To resolve the problems mentioned above, the study shows some solutions in the following:

1) Contract of Booking:

The study shows that Contract of Booking is a type of contract which does not name under the Book III of The Civil and Commercial Code of Thailand (hereinafter as "CCC"). The contract is intended to define the property being sold to be certain, in which results from the intention of the parties. Thus, the enforcement of the contract is only under the scope of the intention of the parties according to "the Principle of Party Autonomy" and under the enforcement of Book I and Book II of CCC.

In general, contract of booking is categorized into 2 types: general contract and contract to sell. Considering on the legal status of contract shall be determined by a primary intention of both parties. Furthermore, the circumstances or the circumstances of the parties shall be considered as well. For example, in case the intention is not known, the expectation of the parties' intention could be determined by concluding a contract in writing or the specification of the property.

Another character of the contract of booking is divided into 2 aspects: the inapplicable and applicable (of contract of booking). The former will be an agreement which provides the detail and the units of booking and may or may not identify the property of booking without any given money (earnest). This shows that the parties have no intention to enforceable contract by action, only wish to inform and mention about the booking. And, the latter could enforceable between the parties. Each of party has a right to enforce others to replace damages or to forfeit the right to booking funds, but has not a right to enforce the others to transfer the ownership. That contract may identify the number of booking funds paid down not less than 10% of the price of the property or paid down high with the agreement in term of re-entitle into a contract to sell. This reflects the intention of the party to not binding in content of contract to sell.

Accordingly, the contract of booking mentioned above is a general contract resulting from the principle of Party Autonomy, in which could be entered into by verbal or in writing and with or without any given earnest. If giving any money, on entering into such contract, it is called in law as "earnest" according to CCC, section 377 and be applicable following to section 388. Hence, the key of contract of booking is the words shown in term that *"the parties agree to re-entitle into a contract to sell."*

In addition, contract of booking is also a kind of reciprocal contract. If the party giving earnest fails to perform, the earnest will be forfeited according to CCC, section 378 (2) and could not claim any damages due to both parties have no intention to run for damages. But if the party receiving earnest fails to perform, the earnest will be returned to the party giving it according to CCC, section 378 (3), and claim compensation for any damages which normally occur by that default such as the cost of travel and time in the amount of reasonableness according to CCC, section 215 and section 222.

On the other hand, contract of booking as a reciprocal contract may be a contract with fees or without fees based on the intention of the parties. In the content of contract of sale (CCC, section 456 paragraph 2), contract of booking is definitely a contract to sell which is *per se* a reciprocal contract since the terms and the objective in the contract are to transfer the ownership in the property to be sold.¹

2. Multiple Contract Forms:

To resolve this problem, the study suggests that the provision of law should be amended. By providing in contract of construction service that *"the party in contract of construction service shall be the same person who the land is allocated to, as a result of having mutually beneficial in following:*

Section 34/1 In case the land has been allowed to allocate, If the allocation party has perform to separate contract of sale of land from contract of construction service or proceed any actions which results in contract of service to build home or any constructions on that allocated land, the party following to the contract of sale and contract of construction service shall be the original party. If the parties of both contracts are changed, the allocation of land shall be liable by that contract of construction service; but this does not apply if the allocation party can prove that to entitle into contract of construction service without any benefits and the buyer make a greed to entitle into such contract of construction service."

¹Some contract of booking (Contract of booking car), nowadays, is followed by The Consumer Protection Act B.E. 2522, as announced by the Committed of the Contract (See Appendix Chor. p. 453).

3) Power to entitle the contract of the seller:

The study suggests that the applicable of CCC, Section 821, the rule of held out agents, shall apply to solve this problem. With this rule, the seller shall be liable for any damages which occur by the person whom the seller holds out as his sale agent.

In accordance with the rule of liability of principal and agent to third party, the suggestion to amend the law should be as following:

Section 34 paragraph 3: A person or any staffs who sell property according to the contract of sale of allocated land, in which sign their name in a contract of instead of the seller shall be hold as an agent of the seller. The contract shall be binding the allocation party, whether the person or any sale staffs shall have the authority to sign or not.

4) Media advertising of Land Allocation Project:

The study suggest to adapt the principle of Consumer Litigation Procedure Act B.E.2551 to be consistent to The Land Allocation Act B.E.2543 as shown below:

"Section 29/2: Any announcement, advertising, affirmative actions or any actions by the allocation party, in which make the buyer, at the time of entitle into a contract, understand that the allocation party agree to offer or provide goods, services, or any other utilities or any proceedings in order to return to the buyer to entitle into the contract of sale of allocated land or any terms to benefit the buyer more than specify in the contract of allocated land, such agreements, terms or actions shall be deemed as a part of contract between the buyer of land allocation and the seller as the allocation party and the buyer has a right to examine the evidence of the agreement by witness or any evidences relating to such agreement although the law requires that such contract shall be made in writing and without such terms in the contract."

5) The sale of the property before the land allocation program approved by the allocated Board:

The study found that the Allocation of Land Act of B.E. 2543 did not obviously prohibit the sale before the land allocation project was approved. However when considering the section 21 and section 4, it can be assumed that sale of land before the permission shall be prohibited, which contradict to the practice at the present. Thus, the

study has launched some measures or regulations to the Act in order to solve this problem as the following:

Section 33/1: The allocation party shall not be allowed to sell any property of project before the Board of allocated has permitted the project. If the property was sold prior the permission, the buyer of allocated land has a right to terminate the contract any time. If the buyer exercises that right, the party shall reconstitute to the status before entitle into the contract and the allocation party shall return the money with the interest at the rate of fifteen percent per year to the buyer from the time which the allocation was ordered deniable.

If the allocation party has been allowed to allocate the land, the buyer of allocated land shall end of right to terminate the contract since that time.

If the allocation party has not been allowed to allocate the land, the allocation party shall return the money with the interest at the rate of fifteen percent per year to the buyer from the time which the allocation was ordered deniable."